Senate

General Assembly

File No. 596

February Session, 2008

Senate Bill No. 385

Senate, April 14, 2008

The Committee on Appropriations reported through SEN. HARP of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING NURSING HOME STAFFING LEVELS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 19a-521a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2008*):

(a) The Department of Public Health shall, whenever possible, conduct dual inspections of chronic and convalescent nursing homes or rest homes with nursing supervision when an inspection of such a facility is necessary for the purpose of the facility's maintaining state licensure and certification for participation in the Title XIX Medicaid program or the Title XVIII Medicare program, provided such dual inspections shall be conducted in not less than **[**fifty per cent of such facilities. On and after January 1, 1993, the department shall conduct such dual inspections in not less than**]** seventy per cent of such facilities. **[**On and after June 3, 2003, such**]** Such dual inspections shall not be disclosed to such facility before such inspection and shall be conducted on a random basis, as to date and time of day.

(b) Prior to any inspection of a chronic and convalescent nursing home or a rest home with nursing supervision conducted under subsection (a) of this section, the department shall calculate the annual number of working hours for all registered nurses, licensed practical nurses and nurse's aides staffing such facility and the total resident days for such facility based on the most recent report to the Commissioner of Social Services pursuant to section 17b-340 of the 2008 supplement to the general statutes. The department shall use such information to calculate an average daily staff-to-resident ratio for such facility. The department shall compare such ratio to the actual nursing staff levels of such facility during such inspection.

(c) At the time of any inspection of a chronic and convalescent nursing home or a rest home with nursing supervision conducted under subsection (a) of this section, the department shall assess residents' care needs to ensure that sufficient numbers and levels of nurses licensed under chapter 378 and nurse's aides are provided by such facility to meet required residents' care needs. Such assessment shall be based on the 1995 and 1997 Staff Time Measurement (STM) Studies, published by the federal Centers for Medicare and Medicaid Services, that determine the nursing minutes needed to care for each resident as ranked in the Resource Utilization Group-III, resident classification system, provided the department shall update the basis of such assessment upon the publication of the 2008 Staff Time and Resource Intensity Verification (STRIVE) Project, or any subsequent version of the federal staff time measurement study or any subsequent reclassification of such resource utilization group. In making such assessment of residents' care needs, the department shall use the data results of the last full resident assessment of such facility as required by the federal Centers for Medicare and Medicaid Services Minimum Data Set. The department shall compare the total number of care hours required by the category scores for such resource utilization group to the amount of care actually provided by such licensed nurses and nurse's aides at such facility. If such total number of care hours actually provided is less than such number of care hours required by the Resource Utilization Group-III, the department shall review the

methodology used by such facility to determine the number, experience and qualifications of nursing personnel necessary to meet residents' care needs.

Sec. 2. (NEW) (*Effective July 1, 2008*) (a) As used in this section, (1) "direct care" means hands-on-care provided to residents of nursing home facilities, including, but not limited to, feeding, bathing, toileting, dressing, lifting and moving such residents, but does not include food preparation, housekeeping or laundry services, except when such services are required to meet the needs of any such resident on an individual situational basis. Direct care shall not include care provided by paid feeding assistants, as defined in 42 CFR 488.301; and (2) "nursing home facility" means a chronic and convalescent nursing home or rest home with nursing supervision; and (3) except as provided in subsection (c) of this section, "licensed nurse" means a person licensed under chapter 378 of the general statutes, as a registered nurse, advanced practice registered nurse or a licensed practical nurse.

(b) On and after January 1, 2009, each nursing home facility shall maintain aggregate licensed nurse and nurse's aide staffing levels at or above the following standards:

(1) Over a twenty-four-hour period, such facility shall provide not less than 2.32 hours of direct care and services per resident given by nurse's aides;

(2) Over a twenty-four-hour period, such facility shall provide not less than 1.18 hours of direct care and services per resident by licensed nurses.

(c) The director of nurses for any nursing home facility with a licensed bed capacity of sixty-one or greater shall not be included in meeting the requirements for direct care and services given by licensed nurses pursuant to subdivision (2) of subsection (b) of this section. Any such facility with a licensed bed capacity of one hundred twenty-one or greater shall employ a full-time assistant director of nurses who

shall not be included in meeting the requirements for direct care and services given by licensed nurses pursuant to subdivision (2) of subsection (b) of this section.

(d) Any nursing home facility that fails to comply with the minimum staffing requirements of subsection (b) of this section on any day shall submit a report to the department, identifying the day on which and the shift during which such noncompliance occurred and specifying the reasons for and circumstances surrounding such noncompliance. The report required by this subdivision shall be submitted on a quarterly basis. If such facility fails to submit any report required by this subdivision or intentionally misrepresents the information contained in any such report, or if the commissioner determines that there is sufficient evidence to support a finding that there exists a pattern of noncompliance by such facility with the minimum staffing requirements of subsection (b) of this subsection, the commissioner shall take action against such facility authorized under section 19a-524 of the general statutes or any other provision of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2008*	19a-521a
Sec. 2	*July 1, 2008*	New section

AGE	*Joint Favorable C/R*	PH
PH	*Joint Favorable C/R*	APP
APP	*Joint Favorable*	

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 $	FY 10 $
Department of Social Services	GF - Cost	Significant	Significant
Public Health, Dept.	GF - Cost	1.38 million	1.36 million
Comptroller Misc. Accounts (Fringe Benefits)[1]	GF - Cost	305,800	765,900

Municipal Impact: None

Explanation

The Department of Public Health (DPH) will incur costs of approximately $1.38 million in FY 09 and $1.36 million in FY 10 to assess individual nursing home residents' care needs and perform other staff to patient comparisons required within section 1 of this bill.

FY 09 costs include: $1.2 million to support the partial year salaries of 12 Nurse Consultants, 2 Supervising Nurse Consultants, 2 Health Program Assistants, 1 Fiscal Administrative Officer and 1 Office Assistant; $57,100 in associated other expenses (including vehicles/gas); $50,000 in one-time data processing consultant services; and $69,420 in one-time equipment costs. FY 10 costs of $1.36 million reflect annualized salaries and ongoing other expenses.

Additional costs would be incurred for fringe benefits ($305,800 FY 09; $765,900 FY 10).

[1] The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The first year fringe benefit costs for new positions do not include pension costs. The estimated first year fringe benefit rate as a percentage of payroll is 25.36%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS fringe benefit rate is 33.27%, which when combined with the rate for non-pension fringe benefits totals 58.63%.

It should be noted that sHB 5021 does include funding for 5 additional DPH staff to perform more frequent nursing home inspections. The agency's ability to conduct more frequent inspections would be mitigated to the extent that any of these resources are instead deployed to functions mandated within SB 385.

Section 2 of the bill increases the required hours of direct care in chronic and convalescent nursing homes (CCHs) and rest homes with nursing supervision (RHNSs) to 3.5 hours per resident, per day by January 1, 2009.

Annually, nursing homes must submit to the Department of Social Services (DSS) audited cost reports that detail direct care hours paid as defined by DSS. According to the 2006 annual cost reports, CCHs had a statewide average of 4.44 hours of paid direct care per resident, per day. RHNSs had an average of 2.93 paid hours. These averages include hours paid to employees who may have been on sick or vacation leave. Therefore, an adjustment for paid leave must be made to these paid direct care averages to correlate to the actual staffed levels in the homes, as required by the bill. Based on a study by the Program Review and Investigation Committee, this reduction would represent approximately ½ hour per resident, per day.

Utilizing this data, and factoring in fringe benefit costs for the homes, it is estimated that the annualized cost to the Medicaid program from the new staffing requirement would be $17.3 million for CCHs and an additional $17.6 million for RHNSs. It is estimated that the new staffing requirements would require increased staffing at 72 of the CCHs and 23 of the RHNSs. Assuming that homes would ramp up staffing prior to January 1, 2009 to meet the new requirements, these changes would have an estimated FY09 Medicaid cost of $21.8 million.

It should be noted that these figures may vary as the current staffing patterns of nursing and nurses' aides may differ from home to home. Additionally, the effort to hire a large number of additional staff in a relatively short time frame may increase the cost to hire staff at homes that are currently above the required staffing levels. A portion of these

costs may be further passed on to the Medicaid program.

sHB 5021 (the budget bill, as reported by the Appropriations Committee) contains $10 million to reflect increasing the minimum paid direct care hours per day to 4.1, effective March 1, 2009. The annualized cost of this initiative would be $24 million. These figures relate to an increase in paid (not staffed) direct care hours for CCHs as reflected in their annual cost reports. These reports indicate that in 2006, CCH's had a paid average of 4.44 hours of direct care per resident, per day. Approximately 116 homes would be affected by this change. The level of funding included in sHB 5021 would translate to a CCH staffed level, as defined by this bill, of 3.6 hours of direct care per resident, per day. sHB 5021 contains no funding to increase staffing levels at RHNSs.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

SB 385

AN ACT CONCERNING NURSING HOME STAFFING LEVELS

SUMMARY:

This bill imposes higher minimum direct care staffing standards on nursing homes starting January 1, 2009. It requires homes that do not meet the standards to report that fact and the surrounding circumstances to the Department of Public Health (DPH) every quarter. It allows the DPH commissioner to take certain enforcement actions against homes that fail to submit the reports or have a pattern of noncompliance with the minimum standards.

It also requires DPH to calculate and assess staff-to-resident ratios and resident care needs when conducting an inspection of a nursing home. It does not include enforcement provisions pertaining to these assessments.

EFFECTIVE DATE: July 1, 2008

MINIMUM DIRECT CARE STAFFING STANDARDS

Definitions

The bill defines "direct care" as hands-on care provided to residents of nursing home facilities, including feeding, bathing, toileting, dressing, lifting and moving residents. It does not include food preparation, housekeeping, or laundry, except when these services are required to meet a resident's needs on a case-by-case basis. It likewise excludes care provided by paid feeding assistants as allowed under federal law. (Feeding assistants are people trained specifically to feed residents or help them eat at mealtimes.)

It defines a "nursing home facility" as a chronic and convalescent nursing home or rest home with nursing supervision.

It also defines "licensed nurse" as an individual licensed by the state as a registered nurse (RN), advanced practice registered nurse (APRN), or licensed practical nurse (LPN).

Minimum Direct Care Staffing Levels

DPH licenses nursing homes at two levels of care: chronic and convalescent care nursing homes (CCNH), which provide skilled nursing care, and rest homes with nursing supervision (RHNS), which provide intermediate care. A nursing home can be licensed at one or both levels of care. Current regulations set somewhat lesser minimum staffing standards for RHNSs than for CCNHs (see BACKGROUND).

Beginning January 1, 2009, the bill requires both types of nursing homes to maintain higher aggregate licensed nurse and nurse's aide staffing levels over a 24-hour period. Table 1 compares the current requirements to those proposed in the bill.

Table 1: Minimum No. of Direct Care Hours per Patient Over a 24-hr. Period

	Nurse's Aides	Licensed Nurses
Current CCNH	1.26 hours	0.64 hours
Current RHNS	0.56 hours	0.31 hours
Proposed: (both types) 1/1/2009	2.32 hours	1.18 hours

Directors and Assistant Directors of Nurses

Under the bill, a facility with a capacity of 61 or more licensed beds cannot count its director of nurses in meeting the minimum direct care staffing requirements for licensed nurses. Current regulations already prohibit this.

The bill requires a facility with a capacity of 121 or more licensed beds to hire a full-time assistant director of nurses, who also cannot be

included in meeting the direct care staffing requirements. Current regulations already require facilities with a capacity of 120 or more licensed beds to hire an assistant director of nurses, but prohibit facilities with a capacity of 121 or more licensed beds from counting directors and assistant directors of nurses in meeting minimum staff ratios.

STAFFING NONCOMPLIANCE REPORTS

The bill requires any nursing home that fails to comply with these staffing minimums on any day to submit a quarterly report to DPH (1) identifying the date and shift when the noncompliance occurred and (2) specifying the reasons for and circumstances surrounding it.

The bill allows the DPH commissioner to take certain enforcement actions (issuing citations and imposing civil penalties) if (1) the facility fails to submit this report or intentionally misrepresents information in it, or (2) the commissioner determines that there is enough evidence to support a finding that the facility has a pattern of noncompliance.

Because the bill only requires a facility to submit a report if a violation occurs, it is unclear how DPH would enforce a nursing home's failure to submit the report if it is relying solely on the home to self-report violations.

NURSING HOME DUAL INSPECTIONS

Staff-to-Resident Ratios

Before conducting any inspection of a nursing home, the bill requires DPH to calculate the average daily staff-to-resident ratio for the facility. To calculate the ratio, DPH must use the most recent cost report submitted to the Department of Social Services (DSS) by the facility. (Currently, nursing homes annually submit financial information to DSS for the purpose of per-diem rate setting. Information submitted includes expenditures, revenue, paid hours worked, and balance sheet data and is audited by DSS.)

DPH must calculate the ratio based on (1) the annual number of working hours for all RNs, LPNs, and nurse's aides staffing the facility

(the bill does not include APRN working hours), and (2) the total resident days for the facility. When inspecting the facility, DPH must compare the average daily staff-to-patient ratio to the actual staffing levels of the facility. It does not require DPH to compare the facility's average staff-to-resident ratio to the new minimum staffing levels established in the bill.

Resident Care Needs Assessment

When inspecting a nursing home, the bill requires DPH to assess residents' care needs (i.e., their acuity) to ensure that the home is providing nursing staffing levels that meet these needs.

DPH must use the following information when making its assessment:

1. the 1995 and 1997 Staff Time Measurement Studies (STM) published by the federal Centers for Medicare and Medicaid Services (CMS); these studies determine nursing minutes based on each resident's ranking in the federal Resource Utilization Group-III (RUGS-III) resident classification system;

2. when it is published, the 2008 Staff Time and Resource Intensity Verification (STRIVE) project or any subsequent federal staff time measurement study or RUGS reclassification (these must be used instead of the STM studies listed above); and

3. data from the facility's last full resident assessment using CMS's Minimum Data Set (MDS).

DPH must compare the total number of direct care hours required under each RUG-III category to the actual number of direct care hours provided by licensed nurses and nurse's aides at the facility. If the latter number is less than the RUG-III requirement, DPH must review the facility's methods to determine the number, experience and qualifications of nursing personnel necessary to meet residents' care needs. (RUGS-III and STRIVE are cost-reimbursement tools used by CMS to determine Medicare and Medicaid nursing home payment

rates.)

BACKGROUND

Current Minimum Nurse Staffing Standards for Nursing Homes

Currently, minimum staffing requirements for CCNHs and RHNSs are set by regulation in the Public Health Code. The actual standards vary somewhat depending on whether the nursing home is a CCNH or an RHNS. Most of the nursing beds in the state are CCNHs. The nurse-to-resident hours per day are set separately for the periods from 7 a.m. to 9 p.m. and 9 p.m. to 7 a.m. and are less for RHNSs than for CCNHs, as shown below.

Direct Care Personnel	*CCNH*		*RHNS*	
	7 a.m. to 9 p.m.	9 p.m. to 7 a.m.	7 a.m. to 9 p.m.	9 p.m. to 7 a.m.
Licensed Nursing Personnel	.47 hpp* (28 min.)	.7 hpp (10 min.)	.23 hpp (14 min.)	.08 hpp (5 min.)
Total Nurses and Nurse Aide Personnel	1.40 hpp (1 hr., 24 min.)	.50 hpp (30 min.)	.70 hpp (42 min.)	.17 hpp (10 min.)
*hours per patient Source: Conn. Agencies Reg.,§ 19-13D8t.				

Nursing Home Dual Inspections

By law, DPH must renew nursing home licenses every two years after an unscheduled inspection and the home's submission of required information (CGS §§ 19a-493(b)(1), 19a-498). DPH also conducts federally required inspections which must be unannounced and conducted, on average, every 12 months, but at least every 15 months. If possible, DPH must conduct the state and federal inspections together in at least 70% of the homes.

Minimum Data Set (MDS) and RUG-III

Federal law requires Medicare and Medicaid certified nursing homes to conduct a comprehensive assessment of all residents within 14 days of admission, upon a significant change in health status, and annually. Facilities use the Minimum Data Set (MDS), which is a standardized resident screening and assessment tool mandated by CMS.

The MDS includes common definitions and coding categories and places each nursing home resident into one of 44 Resource Utilization Groups, Version III (RUG-III). The bases for the RUG groupings are three staff-time measurement studies published by CMS in the 1990s. The purpose of the studies was to define the relationship between resident clinical characteristics and nursing staff time consumed for each resident.

Related bills

HB 5794, reported by the Human Services and Appropriations committees, phases in minimum direct care staffing hours and ratios for CCNHs over a three-year period. It includes inspection, reporting, and enforcement provisions.

HB 5864, reported by the Public Health and Appropriations committees, phases in the same minimum nursing home staffing levels as HB 5794 for both CCNHs and RHNSs, but does not include nurse's aide-to-resident ratios.

SB 32, reported by the Human Services and Appropriations committees, has enforcement and financial reporting provisions for nursing homes.

COMMITTEE ACTION

Select Committee on Aging

Joint Favorable Change of Reference
Yea 11 Nay 0 (03/04/2008)

Public Health Committee

Joint Favorable Change of Reference
Yea 18 Nay 9 (03/14/2008)

Appropriations Committee

Joint Favorable
Yea 37 Nay 16 (03/28/2008)